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# Energy Efficiency Project Bidding Documents for Procurement of Works

# Implementation of Energy Saving Measures

**Section 1. Instructions to Bidders**

### GENERAL

#### Scope of Bid

1.1 The Employer as defined in Section 2, Conditions of Contract, and as specified in the Contract Data, invites bids for the construction of Works, as described in the Contract Data. The name and identification number of the Contract is provided in the Contract Data.

1.2 The successful Bidder will be expected to complete the Works by the Intended Completion Date specified in the Contract Data.

1.3 Throughout these Bidding Documents:

(a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, telex) with proof of receipt;

(b) if the context so requires, “singular” means “plural” and vice versa; and

(c) “day” means calendar day.

#### Source of Funds

2.1 The Borrower, as defined in the Bidding Data, intends to apply part of the funds of a grant from the [donor], as defined in the Bidding Data, towards the cost of the Project, as defined in the Bidding Data, to cover eligible payments under the Contract for the Works. Payments by the [donor] will be made only at the request of the Borrower and upon approval by the [donor] in accordance with the Loan Agreement, and will be subject in all respects to the terms and conditions of that Agreement. Except as the [donor] may specifically otherwise agree, no party other than the Borrower shall derive any rights from the Loan Agreement or have any rights to the grant proceeds.

2.2 The loan Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the [donor], is prohibited by a decision of the [donor].

#### Eligible Bidders

3.1 All bidders shall provide in Section 3, Forms of Bid and Qualification Information, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Borrower to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to bid.

3.2 Government-owned and majority public-owned enterprises from the Borrower country may only participate if they are (i) legally and financially autonomous, (ii) operate under commercial law and (iii) are not a dependent agency of the Borrower or Sub-Borrower.

3.3 A Bidder that has been sanctioned by the [donor] in accordance with the [donor]'s Guidelines on Preventing and Combating Corruption in Projects Financed by [loans] and [credits] and [grants], shall be ineligible to be awarded a [donor]-financed contract, or benefit from a [donor]-financed contract, financially or otherwise, during such period of time as the [donor] shall determine.

3.4 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

#### Qualification of the Bidder

4.1 All bidders shall provide in Section 3, Forms of Bid and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

4.2 In the event that prequalification of potential bidders has been undertaken, only bids from prequalified bidders will be considered for award of Contract. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally-submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section 3.

4.3 If the Employer has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids in Section 3, unless otherwise stated in the Bidding Data:

(a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;

(b) total monetary value of construction work performed for each of the last three years;

(c) experience in works of a similar nature and size and complexity for each of the last five years, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts;

(d) major items of construction equipment proposed to carry out the Contract;

(e) qualifications and experience of key site management and technical personnel proposed for the Contract;

(f) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past three years;

(g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);

(h) authority to seek references from the Bidder's bankers;

(i) information regarding any litigation, current or during the last three years, in which the Bidder is involved, the parties concerned, and disputed amount; and

(j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.

4.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the Bidding Data:

(a) the Bid shall include all the information listed in Sub-Clause 5.3 above for each joint venture partner;

(b) the Bid shall be signed so as to be legally binding on all partners;

(c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

(d) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and

(e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

4.5 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:

(a) annual volume of construction work of at least the amount specified in the Bidding Data;

(b) experience as prime contractor in the construction of at least two contracts of a nature, size and complexity equivalent to the Works over the last 5 years (to comply with this requirement, works cited should be at least 70 percent complete);

(c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the Bidding Data;

(d) a Contract Manager with three years' experience in works of an equivalent nature and volume, including no less than one years as Manager; and

(e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the Bidding Data.

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

4.6 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of Sub-Clause 4.5(a), (b) and (e); however, for a joint venture to qualify, all partners combined must meet all the qualification requirements under 4.5 and each of its partners must meet at least 25 percent and the partner in-charge at least 40% of the minimum requirement under 4.5(a), and for criteria 4.5 (b) at least one partner shall meet the requirement of at least one contract of a nature, size and complexity equivalent to the Works over the last 5 years (to comply with this requirement, works cited should be at least 70 percent complete). Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise stated in the Bidding Data.

#### One Bid per Bidder

5.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Bidder's participation to be disqualified.

#### Cost of Bidding

6.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs.

#### Site Visit

7.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.

### BIDDING DOCUMENTS

#### Content of Bidding Documents

8.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with Clause 10:

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| --- | --- |
| Volume 1  Sections  1 Instructions to Bidders  2 Conditions of Contract  3 Forms of Bid and Qualification  4 Forms of Securities | Volume 2  Sections  5 Bidding Data  6 Contract Data  7 Specifications  8 Drawings  9 Bill of Quantities or Activity Schedule for lump sum contracts |

8.2 The number of copies to be completed and returned with the Bid is specified in the Bidding Data.

#### Clarification of Bidding Documents

9.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing at the Employer's address indicated in the invitation to bid. The Employer will respond to any request for clarification received earlier than 21 days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.

#### Amendment of Bidding Documents

10.1 Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.

10.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum in writing to the Employer.

10.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with Sub-Clause 20.2 below.

### PREPARATION OF BIDS

#### Language of Bid

11.1 All documents relating to the Bid shall be in the language specified in the Contract Data.

#### Documents Comprising the Bid

12.1 The Bid submitted by the Bidder shall comprise the following:

(a) The Bid (in the format indicated in Section 3);

(b) Bid Security, or Bid-Securing Declaration, in accordance with Clause 16, if required;

(c) Priced Bill of Quantities or priced Activity Schedule;

(d) Qualification Information Form and Documents;

(e) Alternative offers where invited;

and any other materials required to be completed and submitted by bidders, as specified in the Bidding Data.

#### Bid Prices

13.1 The Contract shall be for the whole Works, as described in Sub-Clause 1.1, based on the priced Bill of Quantities/priced Activity Schedule for lump sum contracts submitted by the Bidder. The type of contract (Unit Price or Lump Sum) shall be specified in the Bidding Data.

13.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities (for lump sum contracts, described in the drawings and specifications and listed in the Activity Schedule). Items for which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities/Activity Schedule.

13.3 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates, prices, and total Bid price submitted by the Bidder (for lump sum contracts, "the rates and prices" are not applicable).

13.4 The rates and prices (or the lump sum price, as appropriate) quoted by the Bidder shall be subject to adjustment during the performance of the Contract if provided for in the Bidding and Contract Data and the provisions of Clause 44 of the Conditions of Contract. The Bidder shall submit with the Bid all the information required under the Contract Data and Clause 44 of the Conditions of Contract.

#### Currency of Bid and Payment

14.1 The unit rates and prices (or the lump sum price for lump-sum contracts) shall be quoted by the Bidder entirely in the currency of the Employer's country specified in the Bidding Data.

#### Bid Validity

15.1 Bids shall remain valid for the period specified in the Bidding Data.

15.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing. A Bidder may refuse the request without forfeiting the Bid Security or execution of its Bid Securing Declaration. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with Clause 16 in all respects.

#### Bid Security and Bid-Securing Declaration

16.1 The Bidder shall furnish, as part of the Bid, a Bid Security or a Bid-Securing Declaration in original form as specified in the Bidding Data.

16.2 The Bid Security shall be in the amount specified in the Bidding Data and denominated in the currency of the Employer’s country and, at the Bidder's option, be in the form of either a letter of credit, or guarantee from a local [donor] which has been determined by the Bidder to be acceptable to the Employer. The format of the Bid Security should be substantially in accordance with the forms of Bid Security ([donor] Guarantee) or Bid-Securing Declaration included in Section 4 or another form acceptable to the Employer. Bid Security shall be valid for 28 days beyond the validity of the Bid, as extended, if applicable, in accordance with Sub-Clause 15.2.

16.3 Any Bid not accompanied by a substantially responsive Bid Security or Bid-Securing Declaration shall be rejected by the Employer. The Bid Security or Bid-Securing Declaration of a joint venture must define a "bidder" as all joint venture partners and list them in the following manner: a joint venture consisting of "\_\_\_\_\_\_\_\_", "\_\_\_\_\_\_\_\_", and "\_\_\_\_\_\_\_\_\_\_\_.

16.4 The Bid Security or the Bid- Securing Declaration of unsuccessful bidders will be returned within 28 days of the end of the Bid validity period specified in Sub-Clause 15.1.

16.5 The Bid Security or the Bid- Securing Declaration of the successful Bidder will be discharged when the Bidder has signed the Agreement and furnished the required Performance Security.

16.6 The Bid Security or the Bid-Securing Declaration may be forfeited

(a) if the Bidder withdraws the Bid after Bid opening during the period of Bid validity;

(b) if the Bidder does not accept the correction of the Bid price, pursuant to Clause 27; or

(c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to

(i) sign the Agreement; or

(ii) furnish the required Performance Security.

16.7 If a bid security is not required in the Bidding Data, and

(a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 15.2, or

(b) if the successful Bidder fails to: sign the Agreement in accordance with ITB 31; or furnish a performance security in accordance with ITB 32;

The Borrower may, if provided for in the Bidding Data, declare the Bidder disqualified to be awarded a contract by the Employer for a period of time as stated in the Bidding Data.

#### Alternative Proposals by Bidders

17.1 Alternatives shall not be considered, unless specifically allowed in the Bidding Data. If so allowed, Sub-Clauses 17.1 and 17.2 shall govern, and Bidding Data shall specify which of the following options shall be allowed:

(a) Option One. A bidder may submit alternative bids with the base bid and the Employer shall only consider the alternative bids offered by the Bidder whose bid for the base case was determined to be the lowest-evaluated bid, or

(b) Option Two. A bidder may submit an alternative bid with or without a bid for the base case. All bids received, for the base case, as well as alternative bids meeting the technical specifications and performance requirements pursuant to Section 7, shall be evaluated on their own merits.

17.2 Alternative bids shall provide all information necessary for a complete evaluation of the alternative by the Employer, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details.

#### Format and Signing of Bid

18.1 The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 12 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked “ORIGINAL”. In addition, the Bidder shall submit copies of the Bid, in the number specified in the Bidding Data, and clearly marked as “COPIES”. In the event of discrepancy between them, the original shall prevail.

18.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 4.3(a) or 4.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.

18.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

18.4 The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.

### SUBMISSION OF BIDS

#### Sealing and Marking of Bids

19.1 Bidders may submit their bids by mail or by hand. When so specified in the Bidding Data, bidders shall have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the procedures specified in the Bidding Data. The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES”.

19.2 The inner and outer envelopes shall

(a) be addressed to the Employer at the address provided in the Bidding Data;

(b) bear the name and identification number of the Contract as defined in the Bidding and Contract Data; and

(c) provide a warning not to open before the specified time and date for Bid opening as defined in the Bidding Data.

19.3 In addition to the identification required in Sub-Clause 19.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to Clause 21.

19.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

#### Deadline for Submission of Bids

20.1 Bids shall be delivered to the Employer at the address specified in Clause 19.2 (a) above no later than the time and date specified in the Bidding Data.

20.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with Clause 10, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.

#### Late Bids

21.1 Any Bid received by the Employer after the deadline prescribed in Clause 21 will be returned unopened to the Bidder.

#### Modification and Withdrawal of Bids

22.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in Clause 20.

22.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clauses 18 and 19, with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL”, as appropriate.

22.3 No Bid may be modified after the deadline for submission of Bids.

22.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the Bidding Data or as extended pursuant to Sub-Clause 15.2 may result in the forfeiture of the Bid Security or execution of the Bid-Securing Declaration pursuant to Clause 16.

22.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid modifications in accordance with this clause, or included in the original Bid submission.

**BID OPENING AND EVALUATION**

#### Bid Opening

23.1 The Employer will open the bids, including modifications made pursuant to Clause 22, in the presence of the bidders' representatives who choose to attend at the time and in the place specified in the Bidding Data. Any specific opening procedures required if electronic bidding is permitted in accordance with Sub-Clause 19.1, shall be as specified in the Bidding Data.

23.2 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security or Bid-Securing Declaration, if required, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening.

23.3 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with Sub-Clause 23.2.

#### Process to Be Confidential

24.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until publication of the award to the successful Bidder has been announced.

#### Clarification of Bids and Contacting the Employer

25.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer’s discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of unit rates (or the prices in the Activity Schedule for lump-sum contracts). The request for clarification and the response shall be in writing, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 27.

25.2 From the time of bid opening until publication of contract award, if any bidder wishes to contact the Employer on any matter related to the bidding process, it should do so in writing.

25.3 Any effort by the Bidder to influence the Employer in the Employer’s bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidders’ bid.

#### Examination of Bids

26.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in Clause 3; (b) has been properly signed; (c) is accompanied by the Bid Security or the Bid Securing Declaration, if required; and (d) is substantially responsive to the requirements of the bidding documents.

26.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

26.3 If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

#### Correction of Errors

27.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:

(a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and

(b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern, and the unit rate will be corrected.

27.2 The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited or the Bid-Securing Declaration executed in accordance with Sub-Clause 16.6(b).

#### Evaluation and Comparison of Bids

28.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 26.

28.2 In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

(a) making any correction for errors pursuant to Clause 27;

(b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities (or Activity Schedule for lump sum contracts), but including Daywork, where priced competitively;

(c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with Clause 17; and

(d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with Sub-Clause 22.5.

28.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.

28.4 The estimated effect of any price adjustment conditions under Clause 46 of the Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

### AWARD OF CONTRACT

#### Award Criteria

29.1 Subject to Clause 30, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of Clause 3, and (b) qualified in accordance with the provisions of Clause 4.

#### Employer's Right to Accept any Bid and to Reject any or all Bids

30.1 Notwithstanding Clause 29, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action.

#### Notification of Award and Signing of Agreement

31.1 The Bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period in writing. This letter (hereinafter and in the Conditions of Contract called the “Letter of Acceptance”) will state the sum that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the “Contract Price”).

31.2 The notification of award will constitute the formation of the Contract, subject to the Bidder furnishing the Performance Security in accordance with Clause 32 and signing the Agreement in accordance with Sub-Clause 31.3.

31.3 The Agreement will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and sent to the successful Bidder, within 28 days following the notification of award along with the Letter of Acceptance. Within 21 days of receipt, the successful Bidder will sign the Agreement and deliver it to the Employer.

31.4 The Employer shall publish in the national press the results identifying the bid and lot numbers and the following information: (i) name of each bidder who submitted a bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of each bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. After publication of the award, unsuccessful bidders may request in writing to the Employer for a debriefing seeking explanations for the failure of their bids. The Employer shall promptly respond in writing to any unsuccessful Bidder who, after publication of contract award requests the Employer in writing to explain on which grounds its bid was not selected.

#### Performance Security

32.1 Within 21 days after receipt of the Letter of Acceptance the successful Bidder shall deliver to the Employer a Performance Security in the amount stipulated in the Contract Data and in the form stipulated in the Bidding Data.

32.2 If the Performance Security is provided by the successful Bidder in the form of a [donor] Guarantee, it shall be issued by a local [donor].

32.3 Failure of the successful Bidder to comply with the requirements of Sub-Clause 32.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security or execution of the Bid-Securing Declaration.

#### Advance Payment and Security

33.1 The Employer will provide an Advance Payment on the Contract price as stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the Bidding Data. The Advance Payment shall be guaranteed by a Security.

#### Adjudicator

34.1 The Employer proposes the person named in the Bidding Data to be appointed as Adjudicator under the Contract, at an hourly fee specified in the Bidding Data, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract Data at the request of either party.

#### Fraud and Corruption

35.1 It is the [donor]’s policy to require that Borrowers (including beneficiaries of [donor] grants), as well as bidders, suppliers, and contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers and suppliers, under [donor]-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the [donor]:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party ;

(ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(v) “obstructive practice” is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a [donor] investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the [donor]’s inspection and audit rights provided for under sub-clause 35.2 below.

(b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

(c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the [donor] to remedy the situation; and

(d) will sanction a firm or an individual, at any time, in accordance with prevailing [donor]’s sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a [donor]-financed contract; and (ii) to be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a [donor]-financed contract.

35.2 In further pursuance of this policy, Bidders shall permit the [donor] to inspect any accounts and records and other documents relating to the Bid submission and contract performance, and to have them audited by auditors appointed by the [donor].

35.3 Furthermore, Bidders shall be aware of the provision stated in sub-clause 23.2 and sub-clause 61.1 of the Conditions of Contract.

## Section2. Conditions of Contract

#### Definitions

1.1 Terms that are defined in the Contract Data are not also defined in the Conditions of Contract but keep their defined meanings. Boldface type is used to identify defined terms.

Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clauses 24 and 25 hereunder.

Arbitrator is the institution whose arbitration procedures shall be used to resolve disputes in the second instance, as provided for in Clause 25 hereunder.

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.

Certificate of Completion is the certificate issued by the Project Manager upon completion of the Design-Build, as provided for in Clause 52 hereunder.

Compensation Events are those defined in Clause 42 hereunder.

Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 52.1.

Contract is the Contract between the Employer and the Contractor to execute, complete, operate and maintain the Works. It consists of the documents listed in Clause 2.1 below.

Contractor is a person or corporate body whose Bid to carry out the Works has been accepted by the Employer.

Contractor's Bid is the completed bidding document submitted by the Contractor to the Employer.

Contract Price is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

Days are calendar days; months are calendar months.

Dayworks are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

Defect is any part of the Works not completed in accordance with the Contract.

Defects Liability Period is the period named in the Contract Data and calculated from the Completion Date.

Drawings include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

Employer is the party who employs the Contractor to carry out the Works.

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

Initial Contract Price is the Contract Price listed in the Employer's Letter of Acceptance.

Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

Materials are all supplies, including consumable, used by the Contractor for incorporation in the Works.

Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

Project Manager is the person named in the Contract Data (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.

Site is the area defined as such in the Contract Data.

Site Investigation Reports are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

Start Date is given in the Contract Data. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

Subcontractor is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.

Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.

Variation is an instruction given by the Project Manager which varies the Works.

Works are what the Contract requires the Contractor to construct, install, operate and turn over to the Employer, as defined in the Contract Data.

#### Interpretation

2.1 The documents forming the Contract shall be interpreted in the following order of priority:

(1) Agreement,

(2) Letter of Acceptance,

(3) Contractor's Bid,

(4) Contract Data,

(5) Conditions of Contract,

(6) Specifications,

(7) Drawings,

(8) Bill of Quantities or Activity Schedule and

(9) any other document listed in the Contract Data as forming part of the Contract.

#### Language and Law

3.1 The language of the Contract and the law governing the Contract are stated in the Contract Data.

#### Project Manager’s Decisions

4.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

#### Delegation

5.1 The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

#### Communications

6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

#### Sub-contracting

7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.

#### Other Contractors

8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the Contract Data. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

#### Personnel

9.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the Contract Data, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.

9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

#### Employer's and Con-tractor's Risks

10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

#### Employer's Risks

11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:

(a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to

(i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or

(ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.

(b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to

(a) a Defect which existed on the Completion Date,

(b) an event occurring before the Completion Date, which was not itself an Employer's risk, or

(c) the activities of the Contractor on the Site after the Completion Date.

#### Contractor's Risks

12.1 From the Start Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.

#### Insurance

13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the Contract Data for the following events which are due to the Contractor's risks:

(a) loss of or damage to the Works, Plant, and Materials;

(b) loss of or damage to Equipment;

(c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and

(d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

13.5 Both parties shall comply with any conditions of the insurance policies.

#### Site Investigation Reports

14.1 The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the Contract Data, supplemented by any information available to the Bidder.

#### Queries about the Contract Data

15.1 The Project Manager will clarify queries on the Contract Data.

#### Contractor to Construct the Works

16.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

#### The Works to Be Completed by the Intended Completion Date

17.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

#### Approval by the Project Manager

18.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.

18.2 The Contractor shall be responsible for design of Temporary Works.

18.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

18.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

18.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

#### Safety

19.1 The Contractor shall be responsible for the safety of all activities on the Site.

#### Discoveries

20.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

#### Possession of the Site

21.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.

#### Access to the Site

22.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

#### Instructions, Inspections and Audits

23.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

23.2 The Contractor shall permit, and shall cause its Subcontractors and sub-consultants to permit, the [donor] and/or persons appointed by the [donor] to inspect the Site and all accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the [donor] if requested by the [donor]. The Contractor’s and its Subcontractors’ and sub consultants’ attention is drawn to Sub-Clause 61.1[Corrupt or Fraudulent Practices] which provides, inter alia, that acts intended to materially impede the exercise of the [donor]’s inspection and audit rights provided for under Sub-Clause 23.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the [donor]’s prevailing sanctions procedures).

#### Disputes

24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.

#### Procedure for Disputes

25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

25.2 The Adjudicator shall be paid by the hour at the rate specified in the Bidding Data and Contract Data, together with reimbursable expenses of the types specified in the Contract Data, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to the Arbitrator specified in the Contract Data within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

25.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the Contract Data.

#### Replacement of Adjudicator

26.1 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the Contract Data at the request of either party, within 14 days of receipt of such request.

#### Program

27.1 Within the time stated in the Contract Data, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.

27.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

27.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the Contract Data. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted.

27.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

#### Extension of the Intended Completion Date

28.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.

28.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

#### Acceleration

29.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Employer and the Contractor.

29.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.

#### Delays Ordered by the Project Manager

30.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

#### Early Warning

31.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

31.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

#### Identifying Defects

32.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

#### Tests

33.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

#### Correction of Defects

34.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

34.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

#### Uncorrected Defects

35.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

#### Bill of Quantities

36.1 The Bill of Quantities (for lump sum contracts entire Clause 36 shall be replaced with a new Clause as indicated in Contract Data) shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

36.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

#### Changes in the Quantities

37.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. (For lump-sum contracts, this clause shall be substituted by a new clause as indicated in Contract Data).

37.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.

37.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

#### Variations

38.1 All Variations shall be included in updated Programs or Activity Schedules produced by the Contractor.

#### Payments for Variations

39.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

39.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 37.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work. (For lump sum contracts, this Sub-clause shall be deleted as indicated in Contract Data).

39.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

39.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

39.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

#### Payment Certificates

40.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

40.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

40.3 The value of work executed shall be determined by the Project Manager.

40.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed. (For lump sum contracts, this Sub-clause shall be substituted by a new Sub-clause as indicated in the Contract Data).

40.5 The value of work executed shall include the valuation of Variations and Compensation Events.

40.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

#### Payments

41.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.

41.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

41.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.

41.4 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

#### Compensation Events

42.1 The following shall be Compensation Events:

(a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.

(b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.

(c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.

(d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.

(e) The Project Manager unreasonably does not approve a subcontract to be let.

(f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.

(g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.

(h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.

(i) The advance payment is delayed.

(j) The effects on the Contractor of any of the Employer's Risks.

(k) The Project Manager unreasonably delays issuing a Certificate of Completion.

(l) Other Compensation Events described in the Contract Data or determined by the Project Manager shall apply.

42.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

42.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.

42.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

#### Taxes

43.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Certificate of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 44.

#### Price Adjustment

44.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Contract Data. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts. A formula of the type indicated below applies:

P = A + B \* Imc / Ioc

Where

P is the adjustment factor for the portion of the Contract Price.

A and B are coefficients specified in the Contract Data, representing the nonadjustable and adjustable portions, respectively, of the Contract Price; and

Imc is the index prevailing at the end of the month being invoiced and Ioc is the index prevailing 28 days before Bid opening for inputs payable.

Note: The sum of the two coefficients A and B should be 1 (one) in the formula.

44.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

#### Retention

45.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the Contract Data until Completion of the whole of the Works.

45.2 On Completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.

45.3 On completion of the whole Works, the Contractor may substitute retention money with an "on demand" [donor] guarantee.

#### Liquidated Damages

46.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 41.1.

#### Bonus

47.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the Contract Data for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

#### Advance Payment

48.1 The Employer shall make advance payment to the Contractor of the amounts stated in the Contract Data by the date stated in the Contract Data, against provision by the Contractor of an Unconditional [donor] Guarantee in a form and by a [donor] acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.

48.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

48.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, Compensation Events, Bonuses, or Liquidated Damages.

#### Securities

49.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form specified in the Contract Data and by a [donor] or surety acceptable to the Employer. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a [donor] Guarantee.

#### Dayworks

50.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

50.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

50.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

#### Cost of Repairs

51.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Period shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

#### Completion

52.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.

#### Taking Over

53.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing the Certificate of Completion.

#### Final Account

54.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

#### Operating and Maintenance Manuals

55.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.

55.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the Contract Data from payments due to the Contractor.

#### Termination

56.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

56.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

(a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;

(b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;

(c) the Employer or the Contractor is made [donor]rupt or goes into liquidation other than for a reconstruction or amalgamation;

(d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;

(e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;

(f) the Contractor does not maintain a Security, which is required; and

(g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the Contract Data.

56.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 56.2 above or Sub-Clause 61.1 below, the Project Manager shall decide whether the breach is fundamental or not.

56.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

56.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

#### Payment upon Termination

57.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

57.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

#### Property

58.1 All Materials on the Site, Plant, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.

#### Release from Performance

59.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

#### Suspension of [donor] Grant

60.1 In the event that the [donor] suspends the Grant to the Employer from which part of the payments to the Contractor are being made:

(a) The Employer is obliged to notify the Contractor of such suspension within 7 days of having received the [donor]'s suspension notice.

(b) If the Contractor has not received sums due it upon the expiration of the 28 days for payment provided for in Sub clause 41.1, the Contractor may immediately issue a 14-day termination notice.

#### Corrupt or Fraudulent Practices

61.1 If the Employer determines that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, subconsultants, services providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 56.5 shall apply.

61.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9 [Personnel].

61.3 For the purposes of this Sub-Clause:

(i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party ;

(ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation ;

(iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party ;

(iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party ;

(v) “obstructive practice” is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a [donor] investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the [donor]’s inspection and audit rights provided for under Sub-Clause 23.2 [Inspections and Audits by the [donor]].